

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

William C. Toth Jr., et al.

Plaintiffs,

v.

Leigh M. Chapman, et al.,

Defendants

Case No. 1:22-cv-00208-JPW

**MOTION FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT**

The plaintiffs respectfully ask for leave to file a second amended complaint. The plaintiffs' first amended complaint was filed before the Supreme Court of Pennsylvania issued its order of February 23, 2022, which purports to adopt the Carter Plan as the state's congressional map. The second amended complaint will ask the Court to declare the Carter Plan unconstitutional and enjoin the defendants from implementing or enforcing it. The second amended complaint will also allege that the Carter Plan violates the equal-population rule established in *Wesberry v. Sanders*, 376 U.S. 1 (1964), because it contains two-person deviations among congressional districts.

Rule 15(b) allows a party to seek leave to amend "at any time, even after judgment . . . to conform [the pleadings] to the evidence and to raise an unpleaded issue." Fed. R. Civ. P. 15(b). And a court "should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). Leave to amend is

appropriate and consistent with justice because the circumstances of this case have changed now that the Supreme Court of Pennsylvania has issued an order purporting to adopt the Carter Plan, and the defendants intend to implement the Carter Plan as the state's congressional map.

We have attached a proposed order to this motion, and we will file a copy of the proposed second amended complaint (along with its exhibits) as a separate ECF filing.

CONCLUSION

The plaintiffs' motion for leave to file a second amended complaint should be granted.

Respectfully submitted.

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Dated: February 26, 2022

Counsel for Plaintiffs

CERTIFICATE OF CONFERENCE

I certify that I conferred with Robert A. Wiygul, counsel for the defendants, and he informed me that the defendants oppose this motion.

/s/ Jonathan F. Mitchell

JONATHAN F. MITCHELL

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on February 26, 2022, I filed this document on CM/ECF, which will effectuate service upon the following counsel of record:

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